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LAND AND NATURAL RESOURCES;
DEPARTMENT OF LAND AND
NATURAL RESOURCES; and SUZANNE
CASE, in her official capacity as Chairperson
of the Board of Land and Natural Resources

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,

Plaintiff,

vs.

BOARD OF LAND AND NATURAL
RESOURCES; DEPARTMENT OF LAND
AND NATURAL RESOURCES; SUZANNE
CASE, in her official capacity as Chairperson of
the Board of Land and Natural Resources;
ALEXANDER AND BALDWIN, INC., and
EAST MAUI IRRIGATION, LLC.

Defendants.

Civil No. 19-1-0019-01 JPC

DEFENDANTS BOARD OF LAND AND
NATURAL RESOURCES;
DEPARTMENT OF LAND AND
NATURAL RESOURCES; AND SUZANNE
CASE'S **RESPONSE TO PLAINTIFF'S
THIRD REQUEST FOR ADMISSIONS**

No Trial Date Set

**DEFENDANTS BOARD OF LAND AND NATURAL RESOURCES;
DEPARTMENT OF LAND AND NATURAL RESOURCES; AND
SUZANNE CASE'S RESPONSE TO PLAINTIFF'S
THIRD REQUEST FOR ADMISSIONS**

Defendants Board of Land and Natural Resources, Department of Land and Natural Resources, and Suzanne Case, in her official capacity as Chairperson of the Board of Land and Natural Resources, (collectively “Defendant State”), by and through counsel, pursuant to Rule 36 of the Hawaii Rules of Civil Procedure, responds to Plaintiff’s Third Request for Admissions, dated April 23, 2019, as follows:

GENERAL OBJECTIONS

The following general objections are continuing in nature and apply to each admission request, and are hereby incorporated into each response provided, as if fully set forth therein, unless expressly waived with regard to a particular admission:

1. Defendant State objects to each request for admission to the extent that it is vague, ambiguous, uncertain, and/or unintelligible, such that Defendant State cannot determine what information is being sought.
2. In general, with respect to Defendant State’s responses to Plaintiff’s request for admissions, Defendant State objects to all admissions to the extent they seek unrelated information and documents not reasonably calculated to lead to the discovery of admissible evidence. See, Hawaii Rules of Civil Procedure (HRCPP) Rule 26(b)(1).
3. Defendant State objects generally to all admissions, as well as the instructions contained therein that call for information covered by the attorney-client privilege or other applicable privilege, including attorney work product and the governmental deliberative process.
4. Except for explicit facts admitted herein, no general admission of any nature whatsoever are implied or should be inferred from Defendant State’s responses to the admissions.

5. Defendant State's response, or qualified response, to admissions is not to be deemed a waiver of its objections, whether made herein as a general objection and limitation, or made in the context of a particular response below, to any such admission.

6. Defendant State objects to each and every request for admission calling for detailed recollections of individuals because such admission are overly broad, unreasonably burdensome, and oppressive and should be more efficiently propounded in a deposition.

7. Defendant State objects to each and every request for admission to the extent that they seek information beyond that permitted by, or otherwise inconsistent with, the HRCF and/or the Rules of the Circuit Court of the State of Hawai'i.

8. Defendant State objects to each and every request for admission to the extent that they are duplicative and unduly burdensome to the extent that they seek information contained in documents that Plaintiff already has available or in its possession.

9. Without waiving said objections, and subject to other specific objections, a good faith effort response is made.

10. Without waiving these objections and reserving the right to reassert them at or before trial, Defendant State hereby responds to Plaintiff's Third Request for Admissions.

RESPONSES

1. As of November 9, 2018, Suzanne Case, DLNR and BLNR did not know if there was any debris (as that term is used on page 13 of the November 9, 2017 BLNR minutes) within the area encompassed by revocable permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007).

_____ *Admit* X *Deny*

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

Defendants were aware that there were pipes in some areas but deny that they comprised debris. Admit that they were unaware of other debris.

2. Debris (as that term is used on page 13 of the November 9, 2017 BLNR minutes) remains within the area encompassed by revocable permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S--7265 (Tax Map Key (2) 1-1-002:por. 002) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007).

Admit Deny

If not admitted, please specify reasons, for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

Defendants were aware that there were pipes in some areas but deny that they comprised debris. Admit that they are unaware of specific debris.

3. As of December 2018, Suzanne Case, DLNR and BLNR had taken no action to verify the truth of the claims presented in photographs and testimony that had been provided to the BLNR and DLNR in 2018 regarding debris (as that term is used on page 13 of the November 9, 2017 BLNR minutes) within the area encompassed by revocable permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007).

Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

4. Prior to BLNR's November 9, 2018 decision making to holdover revocable permits S-7263, S-7264, S-7265, and S-7266, BLNR, DLNR and Suzanne Case did not know whether any water was being diverted from Hanehoi Stream in October or November 2018.

Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

5. Prior to BLNR's November 9, 2018 decision making to holdover revocable permits S-7263, S-7264, S-7265, and S-7266, BLNR, DLNR and Suzanne Case did not know whether any water was being diverted from Honopou Stream.

X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

6. Information regarding the amount of water that would flow without any diversion and the amount of water diverted can be important in assessing whether diversion of water from east Maui streams adversely affects native aquatic species, native stream habitat, and ecosystem health.

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

7. Suzanne Case, DLNR and BLNR do not know whether the diversion of water from east Maui streams can adversely affects native aquatic species, native stream habitat, ecosystem health, recreational values, natural beauty, and cultural uses.

 Admit X Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

Objection. Overly broad, vague and ambiguous. There are too many variables between streams, diversions, water flow etc. to be able to answer definitively. Defendants admit that it is possible for a diversion of water in some streams to have adverse affects.

8. In the October 16, 2018 status report (HOLDOVER OF EAST MAUI WATER PERMITS 2017 BLNR CONDITIONS: STATUS OF COMPLIANCE) attached to the November 9, 2018 staff submittal on the holdover of the revocable permits, Alexander and Baldwin and East Maui Irrigation Company, Limited asserted that the total amount of water diverted from east Maui streams approximated 20-25 mgd throughout 2018.

 X Admit Deny


If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

9. Data provided to the commission on water resource management reveals that in May and June 2018, A&B and EMI diverted more than thirty million gallons daily on average, and 39.97 mdg on average in July 2018.

X Admit _____ Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

DATED: Honolulu, Hawaii, May 23, 2019.



AMANDA J. WESTON
Deputy Attorney General
Attorney for Defendants
DEPARTMENT OF LAND AND NATURAL
RESOURCES; BOARD OF LAND AND
NATURAL RESOURCES; AND SUZANNE
CASE